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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/415,696 | 10/12/1999 | DONALD K. WRIGHT | 21276-9044 | 5181 |

7590 10/24/2003

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EXAMINER

PASCUA, JES F

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/415,696

Applicant(s)

WRIGHT ET AL.

Examiner

Jes F. Pascua

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-10,13-19 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) 13-17 and 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-10, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 9/10/03 has been entered.

Election/Restrictions

2. Newly submitted claims 22-26 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the product as claimed can be made by another and materially different process such as only engaging the ends of the first and second flexible profile strips and then applying heat and pressure to the ends to form the compression molded segments.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22-26 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4-10, 18 and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tilman '689 for the reasons set forth in the Board Decision of 7/11/03.

The Filing Of An RCE After A Decision By The Board

5. Claims 1, 4-10, 18 and 19 are rejected under the principles of res judicata. See MPEP § 706.07(h).

Response to Arguments

6. Applicant's arguments filed 9/10/03 have been fully considered but they are not persuasive.

The declaration of Joseph P. Krause, filed 9/10/03, has been considered, but fails to overcome the prima facie case of anticipation because the declaration lacks evidence that the reclosable fasteners of the bags shown in Figure 1 of Mr. Krause's declaration were spot sealed according to the method of Tilman U.S. Patent No. 5,071,689. Mr. Krause fails to indicate what particular steps were taken to arrive at the statement, "An inspection of the reclosable bags shown in Figure 1 revealed heat deformation at the ends of the reclosable seals indicating that the reclosable fasteners

were spot sealed. Figure 2 below shows the heat-deformation of the seal and bag attributable to spot sealing used in the '689 patent." (See paragraph 6 of the Joseph P. Krause declaration.)

It is noted that according to the test results of Gaynes Labs, Incorporated (Exhibit 4), the bags alleged, by Mr. Krause, to be spot sealed according to U.S. Patent No. 5,071,689 appear to maintain an airtight seal up to 13.7 " of Hg.

The declaration of Paul A Tilman (sole inventor of U.S. Patent No. 5,071,689), filed 9/10/03, has been considered but fails to overcome the prima facie case of anticipation because the declaration lacks evidence that the reclosable fastener profile of U.S. Patent No. 5,071,689 would not provide an "airtight seal" for *all* atmospheric pressures. Furthermore, there is no evidence in U.S. Patent No. 5,071,689 itself that the reclosable fastener profile does not provide an "airtight seal" as claimed. Finally, the Examiner is unaware of any legal basis that permits Mr. Tilman, by way of declaration, to further limit the scope of his invention after it has been patented.

Conclusion

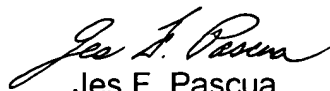
7. This is a continued examination of applicant's earlier Application No. 09/415,696. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.


Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP